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AN ACT

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RELATING TO PROFESSIONAL LICENSING; AMENDING AND ENACTING SECTIONS OF THE DENTAL HEALTH CARE ACT; AMENDING A SECTION OF THE IMPAIRED DENTISTS AND DENTAL HYGIENISTS ACT; CLARIFYING DEFINITIONS; AMENDING LICENSURE PROVISIONS; AMENDING THE NEW MEXICO BOARD OF DENTAL HEALTH CARE'S RULEMAKING AUTHORITY; EXTENDING THE SUNSET DATE OF THE NEW MEXICO BOARD OF DENTAL HEALTH CARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-5A-2 NMSA 1978 (being Laws 1994, Chapter 55, Section 2) is amended to read:

"61-5A-2. PURPOSE.--

A. In the interest of the public health, safety and welfare and to protect the public from the improper, unprofessional, incompetent and unlawful practice of dentistry and dental hygiene, it is necessary to provide laws and rules controlling the granting and use of the privilege to practice dentistry and dental hygiene and to establish a board of dental health care and a dental hygienists committee to implement and enforce those laws and rules.

B. The primary duties of the New Mexico board of dental health care are to issue licenses to qualified dentists and owners of dental practices, to certify qualified dental assistants, to issue licenses to dental hygienists through the dental hygienists committee, to discipline incompetent or unprofessional dentists, dental assistants, owners of dental practices and, through the dental hygienists committee, dental hygienists and to aid in the rehabilitation of impaired dentists and dental hygienists for the purpose of protecting the public."

Section 2. Section 61-5A-3 NMSA 1978 (being Laws 1994, Chapter 55, Section 3) is amended to read:

"61-5A-3. DEFINITIONS.--As used in the Dental Health Care Act:

A. "assessment" means the review and documentation of the oral

1 condition and the recognition and documentation of deviations from the healthy
2 condition, without a diagnosis to determine the cause or nature of disease or its
3 treatment;

4 B. "board" means the New Mexico board of dental health care;

5 C. "certified dental assistant" means an individual certified by the
6 dental assistant national board;

7 D. "collaborative dental hygiene practice" means a New Mexico
8 licensed dental hygienist practicing according to Subsections D and E of Section 61-
9 5A-4 NMSA 1978;

10 E. "committee" means the New Mexico dental hygienists committee;

11 F. "consulting dentist" means a dentist who has entered into an
12 approved agreement to provide consultation and create protocols with a collaborating
13 dental hygienist and, when required, to provide diagnosis and authorization for
14 services, in accordance with the rules of the board and the committee;

15 G. "dental assistant certified in expanded functions" means a dental
16 assistant who meets specific qualifications set forth by rule of the board;

17 H. "dental hygienist" means an individual who has graduated and
18 received a degree from a dental hygiene educational program accredited by the joint
19 commission on dental accreditation, which provides a minimum of two academic years
20 of dental hygiene curriculum and is an institution of higher education and, except as
21 the context otherwise requires, who holds a license to practice dental hygiene in New
22 Mexico;

23 I. "dental laboratory" means any place where dental restorative,
24 prosthetic, cosmetic and therapeutic devices or orthodontic appliances are fabricated,
25 altered or repaired by one or more persons under the orders and authorization of a
dentist;

J. "dental technician" means an individual, other than a licensed
dentist, who fabricates, alters, repairs or assists in the fabrication, alteration or repair
of dental restorative, prosthetic, cosmetic and therapeutic devices or orthodontic

1 appliances under the orders and authorization of a dentist;

2 K. "dentist" means an individual who has graduated and received a
3 degree from a school of dentistry that is accredited by the joint commission on dental
4 accreditation and, except as the context otherwise requires, who holds a license to
5 practice dentistry in New Mexico;

6 L. "general supervision" means the authorization by a dentist of the
7 procedures to be used by a dental hygienist, dental assistant or dental student and
8 the execution of the procedures in accordance with a dentist's diagnosis and treatment
9 plan at a time the dentist is not physically present and in facilities as designated by
10 rule of the board;

11 M. "indirect supervision" means that a dentist, or in certain settings a
12 dental hygienist or dental assistant certified in expanded functions, is present in the
13 treatment facility while authorized treatments are being performed by a dental
14 hygienist, dental assistant or dental student; and

15 N. "non-dentist owner" means an individual not licensed as a dentist in
16 New Mexico or a corporate entity not owned by a majority interest of a New Mexico
17 licensed dentist that employs or contracts with a dentist or dental hygienist to provide
18 dental or dental hygiene services."

19 Section 3. Section 61-5A-4 NMSA 1978 (being Laws 1994, Chapter 55,
20 Section 4, as amended) is amended to read:

21 "61-5A-4. SCOPE OF PRACTICE.--

22 A. As used in the Dental Health Care Act, "practice of dentistry"
23 means:

24 (1) the diagnosis, treatment, correction, change, relief,
25 prevention, prescription of remedy, surgical operation and adjunctive treatment for any
disease, pain, deformity, deficiency, injury, defect, lesion or physical condition
involving both the functional and aesthetic aspects of the teeth, gingivae, jaws and
adjacent hard and soft tissue of the oral and maxillofacial regions, including the
prescription or administration of any drug, medicine, biologic, apparatus, brace,

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1 anesthetic or other therapeutic or diagnostic substance or technique by an individual
2 or his agent or employee gratuitously or for any fee, reward, emolument or any other
3 form of compensation whether direct or indirect;

4 (2) representation of an ability or willingness to do any act
5 mentioned in Paragraph (1) of this subsection;

6 (3) the review of dental insurance claims for therapeutic
7 appropriateness of treatment, including but not limited to the interpretation of
8 radiographs, photographs, models, periodontal records and narratives;

9 (4) the offering of advice or authoritative comment regarding
10 the appropriateness of dental therapies, the need for recommended treatment or the
11 efficacy of specific treatment modalities for other than the purpose of consultation to
12 another dentist; or

13 (5) with specific reference to the teeth, gingivae, jaws or
14 adjacent hard or soft tissues of the oral and maxillofacial region in living persons, to
15 propose, agree or attempt to do or make an examination or give an estimate of cost
16 with intent to, or undertaking to:

17 (a) perform a physical evaluation of a patient in an
18 office or in a hospital, clinic or other medical or dental facility prior to, incident to and
19 appropriate to the performance of any dental services or oral or maxillofacial surgery;

20 (b) perform surgery, an extraction or any other
21 operation or to administer an anesthetic in connection therewith;

22 (c) diagnose or treat any condition, disease, pain,
23 deformity, deficiency, injury, lesion or other physical condition;

24 (d) correct a malposition;

25 (e) treat a fracture;

(f) remove calcareous deposits;

(g) replace missing anatomy with an artificial substitute;

(h) construct, make, furnish, supply, reproduce, alter or
repair an artificial substitute or restorative or corrective appliance or place an artificial

1 substitute or restorative or corrective appliance in the mouth or attempt to adjust it;
2 (i) give interpretations or readings of dental
3 radiographs; or
4 (j) do any other remedial, corrective or restorative
5 work.

6 B. As used in the Dental Health Care Act, "the practice of dental
7 hygiene" means the application of the science of the prevention and treatment of oral
8 disease through the provision of educational, assessment, preventive, clinical and
9 other therapeutic services under the general supervision of a dentist. "Dental
10 hygiene" includes:

11 (1) prophylaxis, which is the treatment of human teeth by
12 removing from their surface calcareous deposits and stain, removing accumulated
13 accretions and polishing the surfaces of the teeth;

14 (2) removing diseased crevicular tissue;

15 (3) the application of pit and fissure sealants without
16 mechanical alteration of the tooth, fluorides and other topical therapeutic and
17 preventive agents;

18 (4) exposing and referring to oral radiographs;

19 (5) screening to identify indications of oral abnormalities;

20 (6) assessment of periodontal conditions; and

21 (7) such other closely related services as permitted by the
22 rules of the committee and the board.

23 C. In addition to performing dental hygiene as defined in Subsection B
24 of this section, dental hygienists who have met such criteria as the committee shall
25 establish and the board ratify may administer local anesthesia under indirect
supervision of a dentist.

D. A New Mexico licensed dental hygienist may be certified for
collaborative dental hygiene practice in accordance with the educational and
experience criteria established collaboratively by the committee and the board.

1 E. For the purpose of this section, "collaborative dental hygiene
2 practice" means the application of the science of the prevention and treatment of oral
3 disease through the provision of educational, assessment, preventive, clinical and
4 other therapeutic services as specified in Subsection B of this section in a cooperative
5 working relationship with a consulting dentist, but without general supervision as set
6 forth by the rules established and approved by both the board and the committee."

7 Section 4. Section 61-5A-5 NMSA 1978 (being Laws 1994, Chapter 55,
8 Section 5) is amended to read:

9 "61-5A-5. LICENSE REQUIRED--EXEMPTIONS.--

10 A. Unless licensed to practice as a dentist under the Dental Health
11 Care Act, no person shall:

- 12 (1) practice dentistry;
- 13 (2) use the title "dentist", "dental surgeon", "oral surgeon" or
14 any other title, abbreviation, letters, figures, signs or devices that indicate the person
15 is a licensed dentist; or
- 16 (3) perform any of the acts enumerated under the definition of
17 the practice of dentistry as defined in the Dental Health Care Act.

18 B. The following, under the stipulations described, may practice
19 dentistry or an area of dentistry without a New Mexico dental license:

- 20 (1) regularly licensed physicians or surgeons are not
21 prohibited from extracting teeth or treating any disease coming within the province of
22 the practice of medicine;
- 23 (2) New Mexico licensed dental hygienists may provide those
24 services within their scope of practice that are also within the scope of the practice of
25 dentistry;
- 26 (3) any dental student duly enrolled in an accredited school of
27 dentistry recognized by the board, while engaged in educational programs offered by
28 the school in private offices, public clinics or educational institutions within the state of
29 New Mexico under the indirect supervision of a licensed dentist;

1 (4) any dental hygiene or dental assisting student duly enrolled S
2 in an accredited school of dental hygiene or dental assisting engaged in procedures P
3 within or outside the scope of dental hygiene that are part of the curriculum of that A
4 program in the school setting and under the indirect supervision of a faculty member C
5 of the accredited program who is a licensed dentist, dental hygienist or dental /
6 assistant certified in the procedures being taught; S
7 B

8 (5) unlicensed persons performing for a licensed dentist 4
9 merely mechanical work upon inert matter in the construction, making, alteration or 5
10 repairing of any artificial dental substitute, dental restorative or corrective appliance, 3
11 when the casts or impressions for the work have been furnished by a licensed dentist P
12 and where the work is prescribed by a dentist pursuant to a written authorization by a
13 that dentist; 7
14 e

15 (6) commissioned dental officers of the uniformed forces of the
16 United States and dentists providing services to the United States public health
17 service, the veterans' administration of the United States or within federally controlled
18 facilities in the discharge of their official duties provided that such persons who hold
19 dental licenses in New Mexico shall be subject to the provisions of the Dental Health
20 Care Act; and

21 (7) dental assistants performing adjunctive services to the
22 provision of dental care, under the indirect supervision of a dentist, as determined by
23 rule of the board if such services are not within the practice of dental hygiene as
24 specifically listed in Subsection B of Section 61-5A-4 NMSA 1978, unless allowed in
25 Subsection E of this section.

26 C. Unless licensed to practice as a dental hygienist under the Dental
27 Health Care Act, no person shall:

28 (1) practice as a dental hygienist;

29 (2) use the title "dental hygienist" or abbreviation "R.D.H." or
30 any other title, abbreviation, letters, figures, signs or devices that indicate the person
31 is a licensed dental hygienist; or

1 (3) perform any of the acts defined as the practice of dental S
2 hygiene in the Dental Health Care Act. P
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3 D. The following, under the stipulations described, may practice dental C
4 hygiene or the area of dental hygiene outlined without a New Mexico dental hygiene /
5 license: S
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6 (1) students enrolled in an accredited dental hygiene program 4
7 engaged in procedures that are part of the curriculum of that program and under the 5
8 indirect supervision of a licensed faculty member of the accredited program; 3
9 P

10 (2) dental assistants working under general supervision who: 9
11 (a) expose dental radiographs after being certified in 8
12 expanded functions by the board;

13 (b) perform rubber cup coronal polishing, which is not
14 represented as a prophylaxis, having satisfied the educational requirements as
15 established by rules of the board;

16 (c) apply fluorides as established by rules of the board;
17 and

18 (d) perform those other dental hygienist functions as
19 recommended to the board by the committee and set forth by rule of the board; and

20 (3) dental assistants certified in expanded functions, working
21 under the indirect supervision of a dental hygienist certified for collaborative practice
22 and under the protocols established in a collaborative practice agreement with a
23 consulting dentist.

24 E. Dental assistants working under the indirect supervision of a dentist
25 and in accordance with the rules and regulations established by the board may:

(1) expose dental radiographs;

(2) perform rubber cup coronal polishing that is not
represented as a prophylaxis;

(3) apply fluoride and pit and fissure sealants without
mechanical alteration of the tooth;

- 1 (4) perform those other dental hygienist functions as
2 recommended to the board by the committee and set forth by rule of the board; and
3 (5) perform such other related functions that are not expressly
4 prohibited by statute or rules of the board.

5 F. Unless licensed as a dentist or non-dentist owner, or as otherwise
6 exempt from the licensing requirements of the Dental Health Care Act, no individual or
7 corporate entity shall:

8 (1) employ or contract with a dentist or dental hygienist for the
9 purpose of providing dental or dental hygiene services as defined by their respective
10 scopes of practice; or

11 (2) enter into a managed care or other agreement to provide
12 dental or dental hygiene services in New Mexico.

13 G. The following, under stipulations described, may function as a non-
14 dentist owner without a New Mexico license:

15 (1) government agencies providing dental services within
16 affiliated facilities;

17 (2) government agencies engaged in providing public health
18 measures to prevent dental disease;

19 (3) spouses of deceased licensed dentists or dental hygienists
20 for a period of one year following the death of the licensee;

21 (4) accredited schools of dentistry, dental hygiene and dental
22 assisting providing dental services solely in an educational setting;

23 (5) dental hygienists licensed in New Mexico or corporate
24 entities with a majority interest owned by a dental hygienist licensed in New Mexico;

25 (6) federally qualified health centers, as designated by the
United States department of health and human services, providing dental services;

(7) nonprofit community-based entities and organizations that
use public funds to provide dental and dental hygiene services for indigent persons;

and

1 (8) hospitals licensed by the department of health." S

2 Section 5. Section 61-5A-7 NMSA 1978 (being Laws 1994, Chapter 55, P
3 Section 7) is amended to read: A
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5 "61-5A-7. DENTAL AND DENTAL HYGIENE DISTRICTS /
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7 CREATED.--For the purpose of selecting members of the board and the committee,
8 there are created five districts composed of the following counties: 4
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10 A. district I: San Juan, Rio Arriba, Taos, Sandoval, McKinley and
11 Cibola; 3
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13 B. district II: Colfax, Union, Mora, Harding, San Miguel, Quay,
14 Guadalupe, Santa Fe and Los Alamos; 9
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16 C. district III: Bernalillo, Valencia and Torrance; 1
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18 D. district IV: Catron, Socorro, Grant, Sierra, Hidalgo, Luna, Dona Ana
19 and Otero; and

20 E. district V: Lincoln, De Baca, Roosevelt, Chaves, Eddy, Curry and
21 Lea." 1

22 Section 6. Section 61-5A-8 NMSA 1978 (being Laws 1994, Chapter 55,
23 Section 8) is amended to read:

24 "61-5A-8. BOARD CREATED.--

25 A. There is created the nine-member "New Mexico board of dental
health care". The board shall consist of five dentists, two dental hygienists and two
public members. The dentists shall be actively practicing and have been licensed
practitioners and residents of New Mexico for a period of five years preceding the date
of appointment. The dental hygienist members shall be members of the committee
and shall be elected annually to sit on the board by those sitting on the committee.
The appointed public members shall be residents of New Mexico and shall have no
financial interest, direct or indirect, in the professions regulated in the Dental Health
Care Act.

B. The governor may appoint the dentist members from a list of names
submitted by the New Mexico dental association. There shall be one member from

1 each district. All board members shall serve until their successors have been
2 appointed. No more than one member may be employed by or receive remuneration
3 from a dental or dental hygiene educational institution.

4 C. Appointments for dentists and public members shall be for terms of
5 five years. Dentists' appointments shall be made so that the term of one dentist
6 member expires on July 1 of each year. Public members' five-year terms begin at the
7 date of appointment.

8 D. Any board member failing to attend three board or committee
9 meetings, either regular or special, during the board member's term shall automatically
10 be removed as a member of the board unless excused from attendance by the board
11 for good cause shown. Members of the board not sitting on the committee shall not be
12 required or allowed to attend committee disciplinary hearings.

13 E. No board member shall serve more than two full terms on any state-
14 chartered board whose responsibility includes the regulation of practice or licensure of
15 dentistry or dental hygiene in New Mexico. A partial term of three or more years shall
16 be considered a full term.

17 F. In the event of any vacancy, the secretary of the board shall
18 immediately notify the governor, the board and committee members and the New
19 Mexico dental association of the reason for its occurrence and action taken by the
20 board, so as to expedite appointment of a new board member.

21 G. The board shall meet at least four times every year and no more
22 than two meetings shall be public rules hearings. Regular meetings shall not be more
23 than one hundred twenty days apart. The board may also hold special meetings and
24 emergency meetings in accordance with rules of the board upon written notice to all
25 members of the board and the committee.

H. Members of the board shall be reimbursed as provided in the Per
Diem and Mileage Act and shall receive no other compensation, perquisite or
allowance; however, the secretary-treasurer may be compensated at the discretion of
the board.

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1 I. A simple majority of the board members currently serving shall
2 constitute a quorum, provided at least two of that quorum are not dentist members and
3 three are dentist members.

4 J. The board shall elect officers annually as deemed necessary to
5 administer its duties and as provided in its rules."

6 Section 7. Section 61-5A-9 NMSA 1978 (being Laws 1994, Chapter 55,
7 Section 9) is amended to read:

8 "61-5A-9. COMMITTEE CREATED.--

9 A. There is created the nine-member "New Mexico dental hygienists
10 committee". The committee shall consist of five dental hygienists, two dentists and two
11 public members. The dental hygienists shall be actively practicing and have been
12 licensed practitioners and residents of New Mexico for a period of five years preceding
13 the date of their appointment. The dentists and public members shall be members of
14 the board and shall be elected annually to sit on the committee by those members
15 sitting on the board.

16 B. The governor may appoint the dental hygienists from a list of names
17 submitted by the New Mexico dental hygienists' association. There shall be one
18 member from each district. All members shall serve until their successors have been
19 appointed. No more than one member may be employed by or receive remuneration
20 from a dental or dental hygiene educational institution.

21 C. Appointments for dental hygienist members shall be for terms of five
22 years. Appointments shall be made so that the term of one dental hygienist expires on
23 July 1 of each year.

24 D. Any committee member failing to attend three committee or board
25 meetings, either regular or special, during the committee member's term shall
automatically be removed as a member of the committee unless excused from
attendance by the committee for good cause shown. Members of the committee not
sitting on the board shall not be required or allowed to attend board disciplinary
hearings.

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1 E. No committee member shall serve more than two full terms on any
2 state-chartered board whose responsibility includes the regulation of practice or
3 licensure of dentistry or dental hygiene in New Mexico. A partial term of three or more
4 years shall be considered a full term.

5 F. In the event of any vacancy, the secretary of the committee shall
6 immediately notify the governor, the committee and board members and the New
7 Mexico dental hygienists' association of the reason for its occurrence and action taken
8 by the committee, so as to expedite appointment of a new committee member.

9 G. The committee shall meet at least four times every year and no
10 more than two meetings shall be public rules hearings. Regular meetings shall not be
11 more than one hundred twenty days apart. The committee may also hold special
12 meetings and emergency meetings in accordance with the rules of the board and
13 committee, upon written notification to all members of the committee and the board.

14 H. Members of the committee shall be reimbursed as provided in the
15 Per Diem and Mileage Act and shall receive no other compensation, perquisite or
16 allowance.

17 I. A simple majority of the committee members currently serving shall
18 constitute a quorum, provided at least two of that quorum are not hygienist members
19 and three are hygienist members.

20 J. The committee shall elect officers annually as deemed necessary to
21 administer its duties and as provided in rules and regulations of the board and
22 committee."

23 Section 8. Section 61-5A-10 NMSA 1978 (being Laws 1994, Chapter 55,
24 Section 10) is amended to read:

25 "61-5A-10. POWERS AND DUTIES OF THE BOARD AND COMMITTEE.--In
addition to any other authority provided by law, the board or the committee shall have
the power to:

A. enforce and administer the provisions of the Dental Health Care
Act;

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1 B. adopt, publish, file and revise, in accordance with the Uniform
2 Licensing Act and the State Rules Act, all rules as may be necessary to:
3 (1) regulate the examination and licensure of dentists and,
4 through the committee, regulate the examination and licensure of dental hygienists;
5 (2) provide for the examination and certification of dental
6 assistants by the board;
7 (3) provide for the regulation of dental technicians by the
8 board;
9 (4) regulate the practice of dentistry, dental assisting and,
10 through the committee, regulate the practice of dental hygiene; and
11 (5) provide for the regulation and licensure of non-dentist
12 owners by the board;
13 C. adopt and use a seal;
14 D. administer oaths to all applicants, witnesses and others appearing
15 before the board or the committee, as appropriate;
16 E. keep an accurate record of all meetings, receipts and
17 disbursements;
18 F. grant, deny, review, suspend and revoke licenses and certificates to
19 practice dentistry, dental assisting and, through the committee, dental hygiene and
20 censure, reprimand, fine and place on probation and stipulation dentists, dental
21 assistants and, through the committee, dental hygienists, in accordance with the
22 Uniform Licensing Act for any cause stated in the Dental Health Care Act;
23 G. grant, deny, review, suspend and revoke licenses to own dental
24 practices and censure, reprimand, fine and place on probation and stipulation non-
25 dentist owners, in accordance with the Uniform Licensing Act, for any cause stated in
the Dental Health Care Act;
H. maintain records of the name, address, license number and such
other demographic data as may serve the needs of the board of all licensees, together
with a record of all license renewals, suspensions, revocations, probations,

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1 stipulations, censures, reprimands and fines. The board shall make available
2 composite reports of demographic data, but shall limit public access to information
3 regarding individuals to their names, addresses, license numbers and license actions
4 or as required by statute;

5 I. hire staff and administrators as necessary to carry out the provisions
6 of the Dental Health Care Act;

7 J. establish ad hoc committees whose members shall be appointed by
8 the chairman with the advice and consent of the board or committee and shall include
9 at least one member of the board or committee, as it deems necessary for carrying on
10 its business;

11 K. have the authority to pay per diem and mileage to individuals who
12 are appointed by the board or the committee to serve on ad hoc committees;

13 L. have the authority to hire or contract with investigators to
14 investigate possible violations of the Dental Health Care Act;

15 M. have the authority to hire an attorney to give advice and counsel in
16 regard to any matter connected with the duties of the board or the committee, to
17 represent the board or the committee in any legal proceedings and to aid in the
18 enforcement of the laws in relation to the Dental Health Care Act and to fix the
19 compensation to be paid to such attorney; provided, however, such attorney shall be
20 compensated from the funds of the board;

21 N. have the authority to issue investigative subpoenas prior to the
22 issuance of a notice of contemplated action for the purpose of investigating complaints
23 against dentists, dental assistants and, through the committee, dental hygienists
24 licensed under the Dental Health Care Act; and

25 O. establish continuing education or continued competency
requirements for dentists, certified dental assistants in expanded functions, dental
technicians and, through the committee, dental hygienists."

Section 9. Section 61-5A-12 NMSA 1978 (being Laws 1994, Chapter 55,
Section 12, as amended) is amended to read:

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1 "61-5A-12. DENTISTS--REQUIREMENTS FOR LICENSURE--SPECIALTY S
2 LICENSE.-- P
3 A. All applicants for licensure as a dentist shall have graduated and A
4 received a degree from a school of dentistry that is accredited by the joint commission /
5 on dental accreditation and have passed the written portion of the dental examination S
6 administered by the joint commission on national dental examinations of the American B
7 dental association or, if the test is not available, another written examination 4
8 determined by the board. 5
9 B. Applicants for a general license to practice dentistry by examination 3
10 shall be required, in addition to the requirements set forth in Subsection A of this P
11 section, to pass a test covering the laws and rules for the practice of dentistry in New a
12 Mexico. Written examinations shall be supplemented by the board or its agents by g
13 administering to each applicant a practical or clinical examination that reasonably tests e
14 the applicant's qualifications to practice general dentistry. Upon an applicant passing 1
15 the written and clinical examinations and payment in advance of the necessary fees, 6
16 the board shall issue a license to practice dentistry.
17 C. The board may issue a general license to practice dentistry, by
18 credentials, without a practical or clinical examination to an applicant who is duly
19 licensed by a clinical examination as a dentist under the laws of another state or
20 territory of the United States; provided that license is active and that all dental licenses
21 that individual possesses have been in good standing for five years prior to
22 application. The credentials must show that no dental board actions have been taken
23 during the five years prior to application; that no proceedings are pending in any
24 states in which the applicant has had a license in the five years prior to application;
25 and that a review of public records, the national practitioners data bank or other
nationally recognized data resources that record actions against a dentist in the United
States does not reveal any activities or unacquitted civil or criminal charges that could
reasonably be construed to constitute evidence of danger to patients, including acts of
moral turpitude.

1 D. The board may issue a general license to practice dentistry by
2 credentials to an applicant who meets the requirements, including payment of
3 appropriate fees and the passing of an examination covering the laws and rules of the
4 practice of dentistry in New Mexico, of the Dental Health Care Act and rules
5 promulgated pursuant to that act, and who:

6 (1) has maintained a uniform service practice in the United
7 States military or public health service for three years immediately preceding the
8 application; or

9 (2) is duly licensed by examination as a dentist pursuant to the
10 laws of another state or territory of the United States.

11 E. The board may issue a specialty license by examination to an
12 applicant who has passed a clinical and written examination given by the board or its
13 examining agents that covers the applicant's specialty. The applicant shall have a
14 postgraduate degree or certificate from an accredited dental college, school of
15 dentistry of a university or other residency program that is accredited by the joint
16 commission on dental accreditation in one of the specialty areas of dentistry
17 recognized by the American dental association. The applicant shall also meet all other
18 requirements as established by rules of the board, which shall include an examination
19 covering the laws and rules of the practice of dentistry in New Mexico. A specialty
20 license limits the licensee to practice only in that specialty area.

21 F. The board may issue a specialty license, by credentials, without a
22 practical or clinical examination to an applicant who is duly licensed by a clinical
23 examination as a dentist under the laws of another state or territory of the United
24 States and who has a postgraduate degree or certificate from an accredited dental
25 college, school of dentistry of a university or other residency program that is
accredited by the joint commission on dental accreditation in one of the specialty
areas of dentistry recognized by the American dental association; provided that
license is active and that all dental licenses that individual possesses have been in
good standing for five years prior to application. The credentials must show that no

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1 dental board actions have been taken during the five years prior to application; that no
2 proceedings are pending in any states in which the applicant has had a license in the
3 five years prior to application; and that a review of public records, the national
4 practitioners data bank or other nationally recognized data resources that record
5 actions against a dentist in the United States does not reveal any activities or
6 unacquitted civil or criminal charges that could reasonably be construed to constitute
7 evidence of danger to patients, including acts of moral turpitude. The applicant shall
8 also meet all other qualifications as deemed necessary by rules of the board, which
9 shall include an examination covering the laws and rules of the practice of dentistry in
10 New Mexico. A specialty license limits the licensee to practice only in that specialty
11 area."

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11 Section 10. Section 61-5A-13 NMSA 1978 (being Laws 1994, Chapter 55,
12 Section 13, as amended) is amended to read:

13 "61-5A-13. DENTAL HYGIENIST LICENSURE.--

14 A. Applicants for licensure shall have graduated and received a
15 degree from an accredited dental hygiene educational program that provides a
16 minimum of two academic years of dental hygiene curriculum and is a post-secondary
17 educational institution accredited by the joint commission on dental accreditation and
18 shall have passed the written portion of the dental hygiene examination administered
19 by the joint commission on national dental examinations of the American dental
20 association or, if this test is not available, another written examination determined by
21 the committee.

22 B. Applicants for licensure by examination shall be required, in addition
23 to the requirements set forth in Subsection A of this section, to pass a written
24 examination covering the laws and rules for practice in New Mexico. Each written
25 examination shall be supplemented by a practical or clinical examination administered
by the committee or its agents that reasonably tests the applicant's qualifications to
practice as a dental hygienist. Upon an applicant passing the written and clinical
examinations, the board, upon recommendation of the committee, shall issue a license

1 to practice as a dental hygienist.

2 C. The board, upon the committee's recommendation, shall issue a
3 license to practice as a dental hygienist by credentials without examination, including
4 practical or clinical examination, to an applicant who is a duly licensed dental hygienist
5 by examination under the laws of another state or territory of the United States and
6 whose license is in good standing for the two previous years in that jurisdiction and if
7 the applicant otherwise meets all other requirements of the Dental Health Care Act,
8 including payment of appropriate fees and passing an examination covering the laws
9 and rules pertaining to practice as a dental hygienist in New Mexico."

10 Section 11. Section 61-5A-14 NMSA 1978 (being Laws 1994, Chapter 55,
11 Section 14) is amended to read:

12 "61-5A-14. TEMPORARY LICENSURE.--The board or the committee may
13 issue a temporary license to practice dentistry or dental hygiene to any applicant who
14 is licensed to practice dentistry or dental hygiene in another state or territory of the
15 United States and who is otherwise qualified to practice dentistry or dental hygiene in
16 this state. The following provisions shall apply:

17 A. the applicant shall hold a valid license in good standing in another
18 state or territory of the United States;

19 B. the applicant shall practice dentistry or dental hygiene under the
20 sponsorship of or in association with a licensed New Mexico dentist or dental hygienist;

21 C. the temporary license may be issued for those activities as
22 stipulated by the board or committee in the rules of the board. It may be issued upon
23 written application of the applicant when accompanied by such proof of qualifications
24 as the secretary-treasurer of the board or committee, in his discretion, may require.

25 Temporary licensees shall engage in only those activities specified on the temporary
license for the time designated, and the temporary license shall identify the licensed
New Mexico dentist or dental hygienist who will sponsor or associate with the applicant
during the time the applicant practices dentistry or dental hygiene in New Mexico;

D. the sponsoring or associating dentist or dental hygienist shall

1 submit an affidavit attesting to the qualifications of the applicant and the activities the
2 applicant will perform;

3 E. the temporary license shall be issued for a period not to exceed
4 twelve months and may be renewed upon application and payment of required fees;

5 F. the application for a temporary license under this section shall be
6 accompanied by a license fee; and

7 G. the temporary licensee shall be required to comply with the Dental
8 Health Care Act and all rules promulgated pursuant thereto."

9 Section 12. A new section of the Dental Health Care Act is enacted to read:

10 "NON-DENTIST OWNER--EMPLOYING OR CONTRACTING FOR DENTAL
11 SERVICES.--

12 A. A person, corporation or agency that desires to function as a non-
13 dentist owner in New Mexico shall apply to the board for the proper license and shall
14 adhere to the requirements, re-licensure criteria and fees as established by the rules
15 of the board.

16 B. Unless licensed as a dentist or non-dentist owner, or as otherwise
17 exempt from the licensing requirements of the Dental Health Care Act, an individual or
18 corporate entity shall not:

19 (1) employ or contract with a dentist or dental hygienist for the
20 purpose of providing dental or dental hygiene services as defined by their respective
21 scopes of practice; or

22 (2) enter into a managed care or other agreement to provide
23 dental or dental hygiene services in New Mexico."

24 Section 13. Section 61-5A-16 NMSA 1978 (being Laws 1994, Chapter 55,
25 Section 16) is amended to read:

"61-5A-16. LICENSE AND CERTIFICATE RENEWALS.--

26 A. Except as provided in Subsection I of this section, all licensees shall
27 be required to renew their licenses triennially as established in rules of the board.

28 B. All dental assistants certified in expanded functions shall be

1 required to renew their certificates triennially as established in rules of the board.

2 C. The board or committee may establish a method to provide for
3 staggered triennial terms and may prorate triennial renewal fees and impaired dentist
4 and dental hygienist fees until staggered triennial renewal is established. The fact that
5 a licensee has not received a renewal form from the board or committee shall not
6 relieve the licensee of the duty to renew the license or certificate nor shall such
7 omission on the part of the board or committee operate to exempt the licensee from
8 the penalties for failure to renew the licensee's license or certificate.

9 D. All licensees shall pay a triennial renewal fee and an impaired
10 dentist and dental hygienist fee, and all licensees shall return a completed renewal
11 application form that includes proof of continuing education or continued competency.

12 E. Each application for triennial renewal of license shall state the
13 licensee's full name, business address, the date and number of the license and all
14 other information requested by the board or committee.

15 F. Any licensee who fails to submit an application for triennial renewal
16 on or before July 1 but who submits an application for triennial renewal within thirty
17 days thereafter shall be assessed a late fee.

18 G. Any licensee who fails to submit application for triennial renewal
19 between thirty and sixty days of the July 1 deadline may have his license or certificate
20 suspended. If the licensee renews by that time, the licensee shall be assessed a
21 cumulative late fee.

22 H. The board or the committee may summarily revoke, for nonpayment
23 of fees or failure to comply with continuing education or continued competency
24 requirements, the license or certificate of any licensee or certificate holder who has
25 failed to renew his license or certificate on or before August 31.

I. A license for a non-dentist owner shall be renewed triennially as
established by rules. An application for renewal of a non-dentist owner license shall
state the name, business address, date and number of the license and all other
information as required by rule of the board. If a non-dentist owner fails to submit the

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1 application for renewal of the license by July 1, the board may assess a late fee. If the
2 non-dentist owner fails to submit the application for a renewal license within sixty days
3 of the July 1 renewal deadline, the board may suspend the license. The license of a
4 non-dentist owner may be summarily revoked by the board for nonpayment of fees.

5 J. Assessment of fees pursuant to this section is not subject to the
6 Uniform Licensing Act."

7 Section 14. Section 61-5A-17 NMSA 1978 (being Laws 1994, Chapter 55,
8 Section 17) is amended to read:

9 "61-5A-17. RETIREMENT AND INACTIVE STATUS--REACTIVATION.--

10 A. Any dentist or dental hygienist who wishes to retire from the practice
11 of dentistry or dental hygiene shall meet all requirements for retirement as set by rules
12 of the board and the committee. The licensee shall notify the board or the committee
13 in writing before the expiration of the licensee's current license, and the secretary of
14 the board or the committee shall acknowledge the receipt of notice and record the
15 same. If, within a period of three years from the date of retirement, the dentist or
16 dental hygienist wishes to resume practice, the applicant shall so notify the board or
17 the committee in writing and give proof of completing all requirements as prescribed by
18 rules of the board and the committee to reactivate the license.

19 B. At any time during the three-year period following retirement, a
20 dentist or dental hygienist with a retired New Mexico license may request in writing to
21 the board or the committee that his license be placed in inactive status. Upon the
22 receipt of the application and fees as determined by the board or the committee and
23 with the approval of the board or the committee, the license may be placed in inactive
24 status.

25 C. A licensee whose license has been placed in inactive status may
not engage in any of the activities contained within the scope of practice of dentistry or
dental hygiene in New Mexico described in Section 61-5A-4 NMSA 1978.

D. Licensees with inactive licenses must renew their licenses triennially
and comply with all the requirements set by the board and the committee.

1 E. If a licensee with an inactive license wishes to resume the active
2 practice of dentistry or dental hygiene, the licensee must notify the board or the
3 committee in writing and provide proof of completion of all requirements to reactivate
4 the license as prescribed by rule of the board or the committee. Upon payment of all
5 fees due, the board may reactivate the license and the licensee may resume the
6 practice of dentistry or dental hygiene subject to any stipulations of the board or the
7 committee.

8 F. Inactive licenses must be reactivated or permanently retired within
9 nine years of having been placed in inactive status.

10 G. Assessment of fees pursuant to this section is not subject to the
11 Uniform Licensing Act."

12 Section 15. Section 61-5A-18 NMSA 1978 (being Laws 1994, Chapter 55,
13 Section 18) is amended to read:

14 "61-5A-18. PRACTICING WITHOUT A LICENSE--PENALTY.--

15 A. Any person who practices dentistry or who attempts to practice
16 dentistry without first complying with the provisions of the Dental Health Care Act and
17 without being the holder of a license entitling the practitioner to practice dentistry in
18 New Mexico is guilty of a fourth degree felony and upon conviction shall be sentenced
19 pursuant to the provisions of the Criminal Sentencing Act to imprisonment for a definite
20 period not to exceed eighteen months and, in the discretion of the sentencing court, to
21 a fine not to exceed five thousand dollars (\$5,000), or both. Each occurrence of
22 practicing dentistry or attempting to practice dentistry without complying with the
23 Dental Health Care Act shall be a separate violation.

24 B. Any person who practices as a dental hygienist or who attempts to
25 practice as a dental hygienist without first complying with the provisions of the Dental
Health Care Act and without being the holder of a license entitling the practitioner to
practice as a dental hygienist in New Mexico is guilty of a misdemeanor and upon
conviction shall be sentenced under the provisions of the Criminal Sentencing Act to
imprisonment for a definite period less than one year and, in the discretion of the

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1 sentencing court, to a fine not to exceed one thousand dollars (\$1,000), or both. Each
2 occurrence of practicing as a dental hygienist or attempting to practice as a dental
3 hygienist without complying with the Dental Health Care Act shall be a separate
4 violation.

5 C. A person that functions or attempts to function as a non-dentist
6 owner or who is an officer of a corporate entity that functions or attempts to function as
7 a non-dentist owner in New Mexico without first complying with the provisions of the
8 Dental Health Care Act is guilty of a misdemeanor and upon conviction shall be
9 sentenced pursuant to the provisions of the Criminal Sentencing Act to imprisonment
10 for a definite period not to exceed one year and, in the discretion of the sentencing
11 court, to a fine not to exceed one thousand dollars (\$1,000), or both. Each
12 occurrence of functioning as a non-dentist owner without complying with the Dental
13 Health Care Act shall be a separate violation.

14 D. The attorney general or district attorney shall prosecute all
15 violations of the Dental Health Care Act.

16 E. Upon conviction of any person for violation of any provision of the
17 Dental Health Care Act, the convicting court may, in addition to the penalty provided in
18 this section, enjoin the person from any further or continued violations of the Dental
19 Health Care Act and enforce the order of contempt proceedings."

20 Section 16. Section 61-5A-20 NMSA 1978 (being Laws 1994, Chapter 55,
21 Section 20) is amended to read:

22 "61-5A-20. FEES.--The board and the committee shall establish a schedule of
23 reasonable fees not to exceed the following:

	<u>Dentists</u>	<u>Dental Hygienists</u>
24 A. licensure by examination	\$1,500	\$1,000
25 B. licensure by credential	\$3,000	\$1,500
C. specialty license by examination	\$1,500	
D. specialty license by		

1	credential	\$3,000		
2	E. temporary license			
3	48 hours		\$ 50	\$ 50
4	six months	\$ 300		\$ 200
5	12 months		\$ 450	\$ 300
6	F. application for			
7	certification in local			
8	anesthesia			\$ 40
9	G. examination in local			
10	anesthesia			\$ 150
11	H. triennial license renewal	\$ 600	\$ 450	
12	I. late renewal	\$ 100	\$ 100	
13	J. reinstatement of license	\$ 450	\$ 300	
14	K. administrative fees	\$ 300	\$ 300	
15	L. impaired dentist or			
16	dental hygienist	\$ 150		\$ 75
17	M. assistant certificate			\$ 100
18	N. application for certification for			
19	collaborative practice			\$ 150
20	O. annual renewal for			
21	collaborative practice			\$ 50
22	P. application for inactive			
23	status	\$ 50		\$ 50
24	Q. triennial renewal of			
25	inactive license	\$ 90		\$ 90
			<u>Non-dentist Owners</u>	
	R. non-dentist owners license (initial)		\$ 300	
	S. non-dentist owners license triennial renewal			\$ 150."

1 Section 21) is amended to read:

2 "61-5A-21. DISCIPLINARY PROCEEDINGS--APPLICATION OF UNIFORM
3 LICENSING ACT.--

4 A. In accordance with the Uniform Licensing Act and rules of the
5 board, the board and committee may fine and may deny, revoke, suspend, stipulate or
6 otherwise limit any license or certificate, including those of licensed non-dentist
7 owners, held or applied for under the Dental Health Care Act, upon findings by the
8 board or the committee that the licensee, certificate holder or applicant:

9 (1) is guilty of fraud or deceit in procuring or attempting to
10 procure a license or certificate;

11 (2) has been convicted of a crime punishable by incarceration
12 in a federal prison or state penitentiary; provided a copy of the record of conviction,
13 certified to by the clerk of the court entering the conviction, shall be conclusive
14 evidence of such conviction;

15 (3) is guilty of gross incompetence or gross negligence, as
16 defined by rules of the board, in the practice of dentistry, dental hygiene or dental
17 assisting;

18 (4) is habitually intemperate or is addicted to the use of
19 habit-forming drugs or is addicted to any vice to such degree as to render the licensee
20 unfit to practice;

21 (5) is guilty of unprofessional conduct as defined by rule;

22 (6) is guilty of any violation of the Controlled Substances Act;

23 (7) has violated any provisions of the Dental Health Care Act
24 or rule or regulation of the board or the committee;

25 (8) is guilty of willfully or negligently practicing beyond the
scope of licensure;

(9) is guilty of practicing dentistry or dental hygiene without a
license or aiding or abetting the practice of dentistry or dental hygiene by a person not
licensed under the Dental Health Care Act;

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1 (10) is guilty of obtaining or attempting to obtain any fee by
2 fraud or misrepresentation or has otherwise acted in a manner or by conduct likely to
3 deceive, defraud or harm the public;

4 (11) is guilty of patient abandonment;

5 (12) is guilty of failing to report to the board any adverse action
6 taken against the licensee by a licensing authority, peer review body, malpractice
7 insurance carrier or other entity as defined in rules of the board and the committee;

8 (13) has had a license, certificate or registration to practice as
9 a dentist or dental hygienist revoked, suspended, denied, stipulated or otherwise
10 limited in any jurisdiction, territory or possession of the United States or another
11 country for actions of the licensee similar to acts described in this subsection. A
12 certified copy of the decision of the jurisdiction taking such disciplinary action will be
13 conclusive evidence; or

14 (14) has failed to furnish the board, its investigators or its
15 representatives with information requested by the board or the committee in the
16 course of an official investigation.

17 B. Disciplinary proceedings may be instituted by sworn complaint by
18 any person, including a board or committee member, and shall conform with the
19 provisions of the Uniform Licensing Act.

20 C. Licensees and certificate holders shall bear the costs of disciplinary
21 proceedings unless exonerated.

22 D. Any person filing a sworn complaint shall be immune from liability
23 arising out of civil action if the complaint is filed in good faith and without actual malice.

24 E. Licensees whose licenses are in a probationary status shall pay
25 reasonable expenses for maintaining probationary status, including but not limited to
laboratory costs when laboratory testing of biological fluids or accounting costs when
audits are included as a condition of probation."

Section 18. Section 61-5A-25 NMSA 1978 (being Laws 1994, Chapter 55,
Section 25) is amended to read:

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1 "61-5A-25. PROTECTED ACTIONS AND COMMUNICATIONS.-- S

2 A. No member of the board or the committee or any ad hoc committee P
3 appointed by the board or the committee shall bear liability or be subject to civil A
4 damages or criminal prosecutions for any action undertaken or performed within the C
5 proper functions of the board or the committee. /
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8 B. All written and oral communication made by any person to the board 4
9 or the committee relating to actual or potential disciplinary action, which includes 5
10 complaints made to the board or the committee, shall be confidential communications 3
11 and are not public records for the purposes of the Public Records Act. All data, P
12 communications and information acquired, prepared or disseminated by the board or a
13 the committee relating to actual or potential disciplinary action or its investigation of g
14 complaints shall not be disclosed except to the extent necessary to carry out the e
15 purposes of the board or the committee or in a judicial appeal from the actions of the 2
16 board or the committee or in a referral of cases made to law enforcement agencies, 8
17 national database clearinghouses or other licensing boards.

18 C. Information contained in complaint files is public information and
19 subject to disclosure when the board or the committee acts on a complaint and issues
20 a notice of contemplated action or reaches a settlement prior to the issuance of a
21 notice of contemplated action.

22 D. No person or legal entity providing information to the board or the
23 committee, whether as a report, a complaint or testimony, shall be subject to civil
24 damages or criminal prosecutions."

25 Section 19. Section 61-5A-26 NMSA 1978 (being Laws 1994, Chapter 55,
Section 26) is amended to read:

"61-5A-26. FUND ESTABLISHED.--

A. There is created in the state treasury the "board of dental health
care fund".

B. All money received by the board and money collected under the
Dental Health Care Act shall be deposited with the state treasurer. The state

1 treasurer shall credit this money to the board of dental health care fund except money
2 collected for the impaired assessment, which shall be held separate from the board
3 fund. Fees collected by the board from fines shall be deposited in the board of dental
4 health care fund and, at the discretion of the board and the committee, may be
5 transferred into the impaired dentists and dental hygienists fund.

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6 C. Payment out of the board of dental health care fund shall be on
7 vouchers issued and signed by the secretary-treasurer of the board upon warrants
8 drawn by the department of finance and administration in accordance with the budget
9 approved by that department.

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10 D. All amounts paid into the board of dental health care fund are
11 subject to the order of the board and are to be used only for meeting necessary
12 expenses incurred in executing the provisions and duties of the Dental Health Care
13 Act. All money unused at the end of any fiscal year shall remain in the fund for use in
14 accordance with provisions of the Dental Health Care Act.

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15 E. All funds that have accumulated to the credit of the board under
16 any previous law shall be continued for use by the board in administration of the
17 Dental Health Care Act."

18 Section 20. Section 61-5A-30 NMSA 1978 (being Laws 1994, Chapter 55,
19 Section 42, as amended) is amended to read:

20 "61-5A-30. DELAYED REPEAL.--The New Mexico board of dental health care
21 is terminated on July 1, 2009 pursuant to the Sunset Act. The board shall continue to
22 operate according to the provisions of the Dental Health Care Act and the Impaired
23 Dentists and Dental Hygienists Act until July 1, 2010. Effective July 1, 2010, the Dental
24 Health Care Act and the Impaired Dentists and Dental Hygienists Act are repealed."

25 Section 21. Section 61-5B-2 NMSA 1978 (being Laws 1994, Chapter 55,
Section 31) is amended to read:

"61-5B-2. DEFINITIONS.--As used in the Impaired Dentists and Dental
Hygienists Act:

A. "board" means the New Mexico board of dental health care;

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B. "dental hygienists committee" means the New Mexico dental
hygienists committee;

C. "dentistry or dental hygiene" means the practice of dentistry or
dental hygiene; and

D. "licensee" means a dentist or dental hygienist licensed by the
board."

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